BLANK

PAGE

BLANK

PAGE

TABLE OF CONTENTS

	Page
OPINIONS BELOW	1
JURISDICTION	1
QUESTION PRESENTED	2
STATEMENT OF THE CASE	2
ARGUMENT AND REASONS FOR AFFIRMING THE JUDGMENT	
A. THE QUESTIONS PRESENTED ARE NOT SUBSTANTIAL IN CHARACTER	3
B. THE DECISION IS CLEARLY CORRECT	8
CONCLUSION	8
APPENDIX A – JUDGMENT OF TRIAL COURT	11
APPENDIX B – DECISION OF THE SUPREME COURT OF GEORGIA	13

Cases:

Metcalf vs. Watertown, 153 U.S. 671 (14 S.C. 947, 38 L.E. 861)	6
Great Western Tel. Co. vs. Purdy, 162 U.S. 329 (16 S.C. 810, 40 L. Ed. 986)	6
Bacon vs. Howard, 20 How, 22, 15 L. Ed. 811	6
Randolph vs. King, 20 F. Cas. No. 11,560, 2 Bond 104	6
Schemmel vs. Cooksley, 256 Ill. 412, 100 N.E. 141	6
Leathe vs. Thomas, 109 Ill. A. 434 (Aff. 216 Ill. 246, 75 N.E. 810, 4 Ann. Cas. 79)	6

TABLE OF CONTENTS—(Continued)

	Page
Meek vs. Meek, 45 Iowa 294	6
Taylor vs. Joor, 7 La. Ann. 272	6
Little vs. McVey (Sup) 47 A. 61	6
Napier vs. Gidiere, 17 S.C. Eq. 215, 40 Am. D. 613	6
Pryor vs. Moore, 3 Tex. 250	6
Tourtelot vs. Booker (Civ. A.) 160 N.W. 293	6
G. E. Terry Ley, Trustee vs. C. L. Simmons, 249 S.W. 2d 808, 36 A. L. R. 2d 563	6
Randolph vs. King, 1867 Z Bond, 104 Fed. Cas. No. 11,560	7
Kelly vs. Heller, 222 Pac. 648	7
Schemmel vs. Cooksley, 256 Ill. 412	7
Meek vs. Meek, 45 Iowa 294	7
McArthur vs. Goddin, 12 Bush 274	7
Taylor vs. Joor, 7 La. Ann. 272	7
Napier vs. Gidiere, 17 S. Car. 215	8
Estes vs. Nyle, 1838 Meigs 34 (Antedating M'elmoyle vs. Cohen, U.S. Supra)	8
Fields vs. Munday, 106 Wis. 383	8
Kuykendall vs. Tod, 219 F. 707, 135 C.C.A. 379	8
Watkins vs. Conway	1
Jacobson vs. Massachusetts, 197 U.S. page 11	4
Zucht vs. King, 260 U.S., pp. 174-176	4

TABLE OF CONTENTS—(Continued).

Page

Constitutional Provisions and Statutes Cited:

Article IV, Section I, United States Constitution 2

Amendment XIV, Section I, United States Constitution 12

Georgia Code Section 3-701 (1933) 3

Georgia Code Section 110-1001 (1933), as amended by 1955 Georgia Laws, pp. 417, 418 13

Georgia Code Section 110-1002 (1933) 5

Miscellaneous:

50 C.J.S., Section 873, at page 448 5

34 C. J., page 1110, note 38 5

BLANK

PAGE

IN THE

Supreme Court of the United States

No. 954

ROBERT D. WATKINS

Appellant.

vs.

J. F. CONWAY,

Appellee.

MOTION TO AFFIRM

OPINIONS BELOW

The opinion of the Trial Judge of the Atlanta Judicial Circuit is reprinted as "Appendix A" hereof. The decision of the Supreme Court of the State of Georgia is reported in the case of *Watkins vs. Conway*, 221 Georgia Reports, page 374, 144 S.E. 2d. page 721 (1965), and is reprinted herein as "Appendix B" hereof.

JURISDICTION

Although the validity of *Georgia Code Section* 3-701 has been formally drawn into question, Appellee con-

tends that the two questions are not substantial in character and have been previously ruled upon. The appeal should be dismissed. The Law is settled.

QUESTION PRESENTED

It is contended by the Appellee that the questions presented by the Appellant are ambiguous, cumbersome and argumentative.

Appellee contends that the two questions succinctly stated would be as follows:

(1) Is Full Faith and Credit as required by the Constitution, Article IV, Section I (*Georgia Code Section* 1-401) denied foreign judgments by the provision of *Georgia Code Section* 3-701, which is:

> "All suits upon judgments obtained out of this State shall be brought within five years after such judgment shall have been obtained."

(2) Is equal protection as required by the Fourteenth Amendment of the Constitution, (*Georgia Code Section* 1-815) denied such foreign judgment because domestic judgments are made valid for seven years and may be revived during dormancy for an additional three years.

STATEMENT OF THE CASE

The Appellant, ROBERT D. WATKINS, filed a personal injury suit against the Appellee and one Charlie Ben Jones, in the Fifteenth Judicial Circuit of Florida, seeking damages. The Appellant's petition as amended, alleges that a verdict was rendered in favor of the Appellant on October 6, 1952. That judgment was entered on said verdict some three years later, viz., October 5, 1955.

hat thereafter on October 5, 1960, five years and one y after the entry of said judgment, the Appellant ought suit against the Appellee on the Florida judg- ent in the Superior Court of Fulton County, Georgia.

The Appellee defensively pled the Statute of Limita- ns, embracing the following Code Section:

Code Section (Georgia) 3-701:

"Suits upon foreign judgments — All suits upon judgments obtained out of this State shall be brought within five years after such judgments shall have been obtained."

Thereafter, the Superior Court of Fulton County, eorgia, on or about June 1, 1965, after a hearing and gument of all counsel for parties litigant, did grant ppellee's Motion For Summary Judgment on the ound that it was barred by the Statute of Limitations Georgia, *Code Section* 3-701, as above quoted.

The Appellant timely appealed the ruling of Fulton perior Court to the Supreme Court of the State of eorgia. On September 22, 1965, after oral argument by unsel for litigant parties, the Supreme Court of Geor- affirmed the decision of the Trial Court, upholding e constitutionality of said Code Section, and adjudging at the said Code Section neither violated the Full Faith d Credit clause, nor the equal protection clause of the nstitution. Appellant's Motion For Rehearing was nied on October 7, 1965.

THE QUESTIONS PRESENTED ARE NOT SUBSTANTIAL IN CHARACTER

A. It is urged by the Appellee that the two questions not substantial and this motion to affirm should be tained.

B. As was stated by this Court in the case of *Jacobson vs. Massachusetts*, 197 U. S., page 11, the Court dismissed the appeal saying:

> "Although the validity of a law was formally drawn in question, it is our duty to decline jurisdiction whenever it appears that the constitutional question presented is not . . . substantial in character."

C. This Court, in *Zucht vs. King*, 260 U. S., pages 174-176, found jurisdiction lacking, since the question presented was not one of substance either frivolous or already settled. It is submitted that the questions presented have been settled.

Actually, the Appellant, being a resident of the State of Florida, and under its jurisdiction, it is noteworthy that the State of Florida itself provides: *Title* 95 of the *Code of the State of Florida*:

(1) A statute of limitations on its domestic judgments of twenty years.

(2) A statute of limitations on foreign judgments sued in that State of seven years.

It is well recognized that in the State of Georgia, that the limitation on its domestic judgments is seven years, *Code Section* 110-1001, and may be revived by a Writ of Scire Facias for an additional period of three years, *Code Section* 110-1002.

In dealing with the two questions presented, we desire to cite to the Court the following:

Code Section 3-701 provides:

> "Suits Upon Foreign Judgments — All suits upon judgments obtained out of the State shall be

brought within five years after such judgment shall have been obtained. (*Acts* 1805, *Cobb*, 564, *Acts* 1855-6, page 234)"

The sole question for determination by this Court is whether or not the above quoted statute is constitutional or unconstitutional.

It is strongly urged by the Appellee that the above quoted statute is constitutional.

It is well recognized in the State of Georgia that the limitation on a domestic judgment in the State of Georgia is seven years (*Code Section* 110-1001) and may be revived for an additional period of three years by Writ of Scire Facias (*Code Section* 110-1002). *Code Section* 3-701, which is under attack on the grounds of being unconstitutional, providing a statute of limitation on foreign judgments of five years.

In dealing with the question as to whether or not *Georgia Code Section* 3-701 is constitutional, reference is made to the following citations and principles of law:

50 Corpus Juris Secundum, Section 873, page 448 provides:

> "The constitutional provision requiring 'full faith and credit' to be given to the judgments of other states is not violated by a statute imposing a reasonable period of limitation on the bringing of suits on such judgments." Citing *Kelly vs. Heller*, 222 Pacific, page 648; 74 Colorado, page 470; and *Bosich vs. Skemitti*, 112 Southern, page 365; 146 Mississippi, page 491; 52 A. L. R., page 564; 34 *Corpus Juris*, page 1110, note 44.

It has been held that the constitutional provision requiring "full faith and credit" to be given to the judg-

ments of other states is not violated by the statute imposing the reasonable period of limitation upon the bringing of suit on such judgments:

U. S. — *Bacon vs. Howard,* 20 How. 22, 15 L. Ed. 811; *Randolph vs. King,* 20 F. Cas. No. 11,560; 2 Bond, 104.

Ill. — *Schemmel vs. Cooksley,* 256 Ill. 412, 100 N.E. 141; *Leathe vs. Thomas,* 109 Ill. A. 434 (Aff. 218 Ill. 246, 75 N.E. 810, 4 Ann. Cas. 79).

Iowa — *Meek vs. Meek,* 45 Iowa 294.

La. — *Taylor vs. Joor,* 7 La. Ann. 272.

N. J. — *Little vs. McVey,* (Sup.) 46 A. 61.

S. C. — *Napier vs. Gidiere,* 17 S.C. Eq. 215, 40 Am D. 613.

Tex. — *Pryor vs. Moore,* 8 Tex. 250; *Tourtelot vs. Booker,* (Civ. A.) 160 N.W. 293.

It is also well established that a statute limiting the time within which an action may be brought on a judgment of a court of another state does not violate the "full faith and credit" clause of the Federal Constitution as is held in the following citations:

U.S.C.A. Constitution, Article IV, Section I;
Great Western Telegraph Co. vs. Purdy,
162 U.S. 329;
16 S. Ct. 810;
40 L. Ed. 986;
Metcalf vs. City of Watertown, 153 U.S. 671;
14 S. Ct. 947;
38 L. Ed. 861.

In the case of *G. E. Terry Ley, Trustee, vs. C. L. Simmons, et al,* Kentucky Court of Appeals, June 20, 1952, 249 S.W. 2d 808; 36 A.L.R. 2d 563, it was held as follows:

(a) The law of the forum governs remedies and procedures.

(b) In the absence of a contrary statutory provision, the time limitation to an action to enforce judgment obtained in another state is controlled by the law of the forum.

(c) A statute limiting the time within which an action may be brought on a judgment of a court of another state does not violate the "full faith and credit" clause of the Federal Constitution.

(d) A statute of limitations does not extinguish the legal right but merely effects the remedy.

(e) That a state statute prohibits maintenance of an action on a judgment of a court of another state where the action is barred by the statute of limitations of that state does not preclude application of the period of the local statute to bar an action on a judgment not barred by the statute of limitations of the state of its rendition.

The contention that a statute of limitation of the orum as to a suit on a foreign judgment violated the "full aith and credit" clause of the Federal Constitution has lso been expressly overruled in the following cases:

U. S. — *Randolph vs. King,* 1867 Z Bond 104, Fed. Cas. No. 11,560;
Col. — *Kelly vs. Heller,* 74 Col. 470, 222 Pac. 648;
Ill. — *Schemmel vs. Cooksley,* 256 Ill. 412;
Iowa — *Meek vs. Meek,* 45 Iowa 294;
Ky. — *McArthur vs. Goddin,* 12 Bush 274;
La. — *Taylor vs. Joor,* 7 La. Ann. 272;

S. C. — *Napier vs. Gidiere,* 17 S. Car. 215;
Ten. — *Estes vs. Nyle,* 1838 Meigs, 34 (Antedating *M'elmoyle vs. Cohen* (U.S. Supra));
Wis. — *Fields vs. Munday,* 106 Wis. 383.

THE DECISION IS CLEARLY CORRECT

The statute of limitations of five years is reasonable. (See *Great Western Tel. Co. vs. Purdy, supra,* as compared to *Kuykendall vs. Tod,* 219 Fed. 707, which held a three month period of limitation unconstitutional.)

CONCLUSION

As Mr. Chief Justice Duckworth of the Supreme Court of the State of Georgia pointed out:

1. This Code Section refers solely to enforceability and not to suits of any kind.
2. There is no statutory law of the State of Georgia dealing with suits on domestic judgments, and none have been cited by counsel for the Appellant.
3. When the Legislature dealt with foreign judgments, in *Code Section* 3-701, it was dealing with the name class "foreign judgments," which was completely unrelated to the subject matter of limitations upon enforcement of domestic judgments within prescribed periods of time as provided in *Georgia Code Section Annotated* 110-1001.

Therefore, AS TO THE QUESTION NUMBER ONE, Full Faith and Credit as required by the Constitution is not denied foreign judgments by *Code Section* 3-701 of the 1933 Code of Georgia as amended.

AS TO QUESTION NUMBER TWO, nor is equal

protection as required by the Fourteenth Amendment (*Georgia Code Section* 1-815) denied such judgment because domestic judgments are made valid for seven years and may be revived for an additional three years.

We respectfully submit, therefore, that the Appellant presents no substantial question for the decision of this Court, and that the judgment of the Supreme Court of Georgia should be affirmed.

MARTIN MCFARLAND
808 William-Oliver Building
Atlanta, Georgia 30303

Counsel for Appellee

PROOF OF SERVICE

MARTIN McFARLAND, Attorney for J. F. CONWAY, Appellee herein, and a member of the Bar of the Supreme Court of the United States; hereby certify that on the 10th day of February, 1966, I have served copies of the foregoing Motion To Affirm on the Appellant therein named by mailing a copy thereof in a duly addressed envelope with postage prepaid to his attorneys of record:

Kilpatrick, Cody, Rogers, McClatchey & Regenstein
1045 Hurt Building
Atlanta, Georgia 30303

Burdick & Silvian
324 Datura Street
Post Office Box 2770
West Palm Beach, Florida 33402

MARTIN MCFARLAND
Attorney for J. F. Conway, Appellee
808 William-Oliver Building
Atlanta, Georgia 30303

"APPENDIX A"

ROBERT D. WATKINS, Plaintiff vs. J. F. CONWAY, Defendant	FULTON SUPERIOR COURT CASE NO. A-82670

ORDER

The Motion for Summary Judgment filed by defendant on the 19th day of February, 1965, and plaintiff's Motion to Strike defendant's Plea of the Statute of Limitations coming on regularly to be heard, and after hearing from counsel for plaintiff and defendant, and it appearing to the Court that the defendant has withdrawn the plea to the statute of limitations filed on May 18, 1964, leaving filed of record the amended answer and plea to the statute of limitations ordered filed of record on February 1, 1965, and filed of record on February 1, 1965, and it further appearing to the Court that the sole question to be determined is the constitutionality of Georgia Code Section 3-701 as raised by defendant's Motion to Strike defendant's Plea of the Statute of Limitations, and it appearing to the Court that plaintiff's amended petition shows on its face that the said Florida judgment was obtained by the plaintiff and against the defendant on October 5, 1955 (5 years and 1 day before the filing of this suit, Case A-82670 Fulton Superior Court) and that said period of limitation had run,

NOW THEREFORE, after consideration, it is hereby ordered and adjudged as follows, to-wit:

(1) The Motion for Summary Judgment filed by de-

fendant on February 19, 1965, is hereby granted on the grounds that the statute of limitations provided by Georgia Code Section 3-701 has run and that Georgia Code Section 3-701 is hereby declared constitutional; and

(2) Plaintiff's Motion to Strike filed May 28, 1965, is hereby denied, it being found that Georgia Code Section 3-701 neither violates Article IV, Section I, (full faith and credit clause) of the United States Constitution nor Amendment XIV of the United States Constitution.

This 1st day of June, 1965.

VIRLYN B. MOORE
Judge, Superior Court
Atlanta Judicial Circuit

"APPENDIX B"

DUCKWORTH, Chief Justice. 1. Full faith and credit as required by the Constitution, Art. IV, Sec. I (Code Section 1-401), is not denied foreign judgments by the provision of Code Section 3-701, which is: "All suits upon judgments obtained out of this State shall be brought within five years after such judgments shall have been obtained." 50 CJS 448, section 873, and cases cited; Metcalf vs. Watertown, 153 U.S. 671 14 SC 947, 38 LE. 861); Great Western Tel. Co. vs. Purdy, 162 U.S. 329 (16 SC 810, 40 LE. 986).

2. Nor is equal protection required by the 14th Amendment (Code Section 1-815) denied such judgments because domestic judgments are made valid for 7 years (Code Ann. 110-1001; Ga. L. 1955, pp. 417, 418), and may be revived during dormancy of 3 years from 7 to 10 years after rendition. Code Sections 110-1002, 110-1003. This law refers solely to enforceability and is unrelated to suits of any kind.

3. We know of no statutory law of this State dealing with suits on domestic judgments, and none has been cited by counsel for plaintiffs in error. Therefore, when the legislature dealt with foreign judgments in Code Section 3-701 it was dealing with the named class, "foreign judgments," which was completely unrelated to the subject matter of limitations upon enforcement of domestic judgments within prescribed periods of time as provided in Code Ann. Section 110-1001, supra.

4. Therefore, the plea of the limitations of Code Section 3-701 to this suit on a Florida judgment which was instituted more than five years after the date of that

judgment was valid, and the court did not err in sustaining the same and dismissing the suit based upon the Florida judgment.

Judgment affirmed. All the Justices concur, except Mobley, J., not participating for providential cause.

Argued September 15, 1965 — Decided September 22, 1965 — Rehearing Denied October 7, 1965.

Action on foreign judgment; constitutional question. Fulton Superior Court. Before Judge Moore.

Kilpatrick, Cody, Rogers, McClatchey & Regenstein, William G. Vance, for plaintiff in error.

Martin McFarland, contra.

BLANK

PAGE